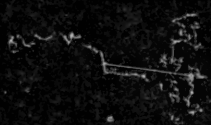

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

79-403

[redacted]

OWEN W. CRUMPACKER,

Petitioner,

vs.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT, INDIANA SUPREME COURT DISCIPLINARY COMMISSION, IN OPPOSITION

I.

Opinions Below

The Petitioner's summary of the opinions below is correct, except that the Respondent says that the findings of fact, conclusions of law, and recommendation of the Hearing Officer filed on November 9, 1976, do not constitute a part of the opinions below of the Supreme Court of Indiana.

II.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

III.

Questions Presented

The Respondent will respond below in its Argument to each of the three (3) questions presented.

IV.

Constitutional Provisions, Statutes, and Court Rules Involved

The Petitioner has fairly summarized those provisions of the various constitutional provisions, statutes and court rules he claims

have application to the questions presented.

V.

Statement of the Case

A substantial part of the Petitioner's statement of the case is mere argument and surplusage. Some of it is erroneous. It is an erroneous statement that the Disciplinary Commission did not properly challenge the Hearing Officer's findings (Petitioner's Brief, p. 11). On January 7, 1977, the Disciplinary Commission timely filed its thirty-eight page Petition For Review pursuant to A&D Rule 23, Section 15(a). On March 30, 1977, the Disciplinary Commission timely filed its two hundred sixty-seven page Brief Of Indiana Supreme Court Disciplinary Commission In Support Of Petition For Review pursuant to A&D Rule 23, Section 15(c).

VI.

Reasons for Denying the Writ

The Petitioner first asserts that he was denied due process and equal protection of the

laws when the Supreme Court of Indiana allegedly violated its own rules by:

(a) Entertaining a review of its Hearing Officer's finding when such findings were exculpatory of the Petitioner;

(b) Finding professional misconduct where no such finding was made by the Hearing Officer;

(c) Finding professional misconduct without and outside of the record;

(d) Making a determination adverse to the Petitioner without first giving the Petitioner notice of and an opportunity to be heard on the question whether the Court could find and impose discipline where none was found by the Hearing Officer.

Each contention is utterly without merit.

The Petitioner's Brief makes statements about the Rules of the Supreme Court of Indiana applicable to attorney disciplinary proceedings which are wholly inaccurate and incorrect. It is not true that Admission and Discipline Rule 15 provides for review by the Court of a Hear-

ing Officer's findings only when those findings are adverse to the attorney. Rule 15(a) specifically provides to "(t)he respondent, complainant or Commission..." the right to petition the Court for a review of the findings of a hearing officer. (Petitioner's Appendix, p. A82). The Petitioner also incorrectly states that the Supreme Court of Indiana has never previously found misconduct where no such finding was made by the Hearing Officer. Although not apparent from the opinion of the Court, the case of In Re Smith (1976), ____Ind.____, 351 N.E.2d 1, represents a situation where the Supreme Court of Indiana found misconduct even though the findings of the hearing officer were in the favor of the attorney. In other cases, the Court has increased the discipline recommended by the hearing officer. See, e.g., In Re Farr (1976), 264 Ind. 153, 340 N.E.2d 777.

The Petitioner makes the unfounded and serious charge that the Supreme Court of Indiana decided his case without the benefit

of the record. (Petitioner's Brief, p. 16). He offers no proof in support of this charge, save that the Clerk's record shows no transmission of the transcript to the Court. He fails to cite any statute or authority that requires the Clerk to make such an entry or any proof that such transmission was not accomplished. It is true that the Supreme Court of Indiana was required to decide the case without having the benefit of the trial exhibits; the Petitioner refused to return them to the Court. (See Petitioner's Appendix, pp. A27-A28). But the opinion of the Court makes it plain that the case was decided by it with the benefit of the transcript of the evidence.

The Supreme Court of Indiana was not required to give the Petitioner any advance notice that its decision was going to differ from that of the Hearing Officer. The matter was before the Court for review and the Petitioner admits that he "prepared, served and filed extensive briefs demonstrating, again

with specific reference to the 4700 page transcript and the exhibits on file in the Clerk's office, why the petitions for review should not be granted". (Petitioner's Brief, pp. 10-11). He also admits to filing objections and "extensive supplemental objections" to the petition for review. The Court followed its Rules and, as it so happened, decided the case adversely to the Petitioner. The Court's Rules did not require that the Petitioner be specifically forewarned of a possible adverse result, as such a consequence is plainly possible from the language of the Rules.

In summary, the Supreme Court of Indiana adhered to its Rules in processing and deciding the case below, and Petitioner has wholly failed to demonstrate how any of such Rules or the manner in which they were applied in this case were violative of any of the Petitioner's constitutional rights.

The underlying theme of the Petitioner's brief is that the Supreme Court of Indiana acted unlawfully, arbitrarily, and in violation

of its Rules, merely by reaching a conclusion in this case that was contrary to the findings of the Hearing Officer. This theme is based upon the Petitioner's total misconception of the role of the Supreme Court of Indiana under its subject Rules. That role was restated by the Court in this very case as follows:

> "The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. In re Wireman, Supra, In re Murray, Supra, In re Pawlowski, (1959), 240 Ind. 412, 165 N.E.2d 595." (Petitioner's Appendix, p. A 27)

In deciding this case, the Court followed the principles which it had enunciated in its decision in In re Murray (1977), ____Ind.____, 362 N.E.2d 128, 130-131, as follows:

"It should be noted at the outset that a disciplinary proceeding is an original action in this Court. Ind. Const., Art. 7, §4. As such, this Court sits as a trial court and must determine issues of fact; this clearly distinguishes the disciplinary proceeding from an appeal. In re Pawlowski (1959), 240 Ind. 412, 165 N.E.2d 595.

"Recognizing this distinction, in the absence of any agreement by the parties as to factual issues, this Court examines and reviews all matters which have been submitted in a particular cause. An examination of the previous opinions of this Court demonstrates that the findings of fact are only the initial starting point for review by this Court. See, In re Wood (1976), Ind., 358 N.E.2d 128; In re Smith (1976), Ind., 351 N.E.2d 1; In re Bradburn (1966), 248 Ind. 29, 221 N.E.2d 885; In re Holovachka (1964), 245 Ind. 483, 198 N.E.2d 381. It is through this complete examination of all matters that this Court makes its ultimate findings of fact upon which a determination of misconduct is weighed.

"The findings of the Hearing Officer thus are reviewed within this Court's consideration of all relevant matters. These findings do receive emphasis in that the Hearing Officer observes the witnesses, absorbs the nuances of unspoken communication, and by this observation attaches credibility to the testimony, but such findings are not necessarily controlling on this Court and never have been. In re Pawlowski, supra.

"In the end, the findings of fact reached by this Court are the product

of this Court's examination of the entire record with the above noted consideration being given to the findings of fact submitted by the Hearing Officer. Thus, there is no standard of review as applied within appellate procedure, but merely the application of a process of determination whereby this Court finds facts as is required in all original actions."

The application of the above principles to this case resulted in the Petitioner's disbarment. A reading of the Court's opinion in this case would convince any fair minded person of the correctness of such result.

Conclusion

The decision below is correct. For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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